National Pollution Funds Center
4200 Wilson Blvd
Suite 1000
Arlington, VA 22203-4700
Phone (703) 235-4700
Fax (703) 235-4840

For Details, Contact:
Linda Burdette
NPFC
Phone (703) 235-4801

National Pollution Funds Center News Release

"COAST GUARD PROVIDES INFORMATION ON T/B NORTH CAPE CLAIMS"

Washington -- The U.S. Coast Guard National Pollution Funds Center (NPFC) announced today the availability of information concerning the methodology that it is utilizing to adjudicate or measure lost profit claims from lobstermen that occurred from damages arising from the T/B NORTH CAPE oil spill of January 19, 1996. The information will be available as a hand out at the hearing held on December 10, 1998 by the Committee on Environment and Public Works of the U.S. Senate in Narragansett, Rhode Island.

The NPFC is also providing information concerning the impact of the three-year statute of limitations on potential claimants that were damaged by the oil spill.

Copies of both documents are attached. They will also be available on NPFC's web site at http:/www.uscg.mil/hq/npfc/npfc.htm.

Both documents are provided in an effort to address questions which have arisen concerning these issues. For additional information concerning the documents please contact, Ms. Linda Burdette, Chief, Claims Adjudication Division, National Pollution Funds Center, (703)-235-4801.

For Immediate Release: December 10, 1998

INFORMATION CONCERNING STATUTE OF LIMITATIONS AND THE T/B NORTH CAPE SPILL PROVIDED BY THE U.S. COAST GUARD'S NATIONAL POLLUTION FUNDS CENTER
10 DECEMBER 1998

The U.S. Coast Guard National Pollution Funds Center (NPFC) announced today that any person who plans to present an OPA oil spill incident claim for damages arising from the T/B NORTH CAPE oil spill of 19 January 1996, is advised that the claim must be presented to the NPFC within three years after the date on which the injury and its connection with the spill were reasonably discoverable with the exercise of due care. This does not mean that the time frame for submitting claims to NFPC ends on 19 January 1999, however potential claimants do need to know the general conditions that start the clock for the three-year statute of limitations.

All OPA damage claims arising from the T/B NORTH CAPE oil spill must be first presented to the responsible party, Eklof Marine. If the responsible party denies the claim or fails to settle the claim within 90 days, the claimant may present the claim to the NPFC. While the responsible party may choose to accept and settle claims after the three-year period has elapsed, the NPFC cannot waive the three-year statutory limit for claims presented to the NPFC for payment from the Oil Spill Liability Trust Fund.

The circumstances of each claim will determine when the three-year period starts. It is possible that a given claimant may have more than one injury from a spill, each of which is discovered or reasonably discoverable at a different time. So a claimant may have separate claims with different three-year periods for submission.

OPA damages for which claims may be submitted include loss of profit damages. In general, a loss of profit injury is reasonably discoverable no later than when, in the course of its normal business accounting practices, or otherwise as required by law, the claimant determines, or is required to determine, business losses for a given period. But if a business in fact discovers it suffered a loss at an earlier date, that date will control. In the absence of other information as to when a loss of profit or earning capacity was in fact discovered, the NPFC may rely on the date of relevant income tax filings to establish the date the loss was reasonably discoverable.

The connection of the injury to the oil spill also will be determined by the circumstances. The connection may be reasonably made when the injury is discovered or discoverable. For example if your boat was oiled by the spill and you had it cleaned the next week and have not submitted a claim, the statute of limitations is quickly coming to an end. However in some circumstances the connection may be reasonably discoverable only at a later time because, for example, information about the spill or its impact was not available until a later time.

Because the circumstances of each claim will determine when the three-year period starts for that claim, the NPFC cannot provide a single date to begin the three-year period that will apply to any particular claim or class of claims. The only certainty is that the period begins no sooner than the initial date of the spill; therefore any claim submitted within three years after the initial date of the spill will certainly be timely. Beyond that, the best guidance the NPFC can offer to potential claimants is that they not delay submitting a claim for a period of years. Such delays will only increase the risk that an otherwise valid claim may be denied in whole or in part solely because it is submitted late. Presenting a claim to the NPFC does not preclude a claimant from continuing to pursue settlement with the responsible party. So claimants may submit a claim to the NPFC to meet the three-year requirement while still pursuing a settlement with the responsible party. Of course, the claimant cannot be paid twice for the same damage.

MEASUREMENT OF LOST PROFITS CLAIMS BY LOBSTERMEN ARISING FROM THE NORTH CAPE OIL SPILL PROVIDED BY THE US COAST GUARD NATIONAL POLLUTION FUNDS CENTER

10 December 1998

The following is an explanation of the National Pollution Funds Center's (NPFC) methodology for measurement of lost profits claims filed by lobstermen in Point Judith, Rhode Island. The lobstermen were prevented from fishing during part of 1996 after the oil spill from the North Cape impacted their fishery. NPFC has concluded that damages did occur to the lobster industry as reflected by statistics indicating substantially reduced catch levels after the spill and into late summer of 1996 at which point statistics indicate that catch levels returned to previous year levels. This methodology is intended to measure the lost profits and earning capacity suffered by lobstermen during the period from the spill until late summer 1996 by taking into account the seasonal nature of the lobster industry, a benefit for additional effort expended by some individuals during 1996, and the varying levels of success among lobstermen in the area historically. Essentially, the methodology applies 1995 performance of claimants to 1996 effort to calculate an expected 1996 profit. Claims paid are the difference between expected profit and lower actual profit, adjusting for saved expenses.

Methodology: (Example attached)

(1) The methodology uses Rhode Island DEM statistics and quarterly catch historical data to calculate the *Average pounds of marketable lobster in each trap haul* (average catch per trap-haul) on monthly basis. The average catch per trap-haul is calculated on a monthly basis to account for the seasonality of lobster fishing.

(2) The average catch per trap-haul is then multiplied by the *Number of traps* that are checked or "hauled" on any given trip. This number will vary for each fisherman; our example uses 300 traps per trip. The number of trap-hauls in 1996 will be revised to consider traps retired, sold or purchased. If additional traps are proven to have been purchased in 1996, we will determine the maximum number of traps that can be hauled per trip for each claimant. The number of trap-hauls is multiplied by the 1996 seasonally adjusted average catch per trap-haul to derive the *1996 Expected Catch per trip*.

(3) To determine the *1996 Total Expected Catch* the 1996 Expected Catch per trip is multiplied by the *number of trips*. During the fishing closure due to the spill, the number of trips for 1996 is based on the actual number of trips made for the same period in 1995 as the determined loss period. However, for periods when the fishing areas were no longer closed due to the oil spill, the number of trips is based upon settlement sheets or receipts provided by the claimant.

(4) The 1996 Total Expected Catch is then compared to the lobstermen's previous years catch in relation to the average lobsterman's catch, to account for the experience of the individual lobsterman, to calculate the *1996 Projected Catch*. Expected catch for 1995 is compared with the actual catch in 1995 to calculate the *1995 Monthly Catch Variance Percentage*. Expected catch for 1995 is calculated in the same manner as expected for 1996. We consider that the claimant's 1995 catch percentage variance will be the same for 1996. For example, if the claimant's settlement sheets or receipts show that they normally exceed this calculation (variance greater than 100%), we will adjust their expected catch upward to calculate projected catch.

(5) The *1995 Quarterly Average Price Per Pound* for Point Judith was provided by a New England scientific expert.

(6) The *1996 Projected Monthly Sales* is calculated by multiplying 1996 Projected Catch by the corresponding 1995 Pt. Judith quarterly average price per pound.

(7) Actual Sales for 1996 are subtracted from projected sales for 1996 to calculate *Total Lost Sales for 1996.*

(8) *Saved Expenses* (for example, fuel, bait and crew-share) are calculated as a percentage of sales. Amounts are based on the claimant's 1995 Income Tax Return. During the closure due to the spill, we calculate saved expenses as a percentage of lost sales. Any additional expenses incurred during that time will also be considered.

(9) Saved Expenses are subtracted from 1996 lost sales and additional expenses are added to calculate *1996 Lost Profits*.

Documentation Requirements:

Specific information is needed from the claimant in order to utilize this methodology to calculate 1996 lost lobster income. We do not require that the information be provided in a specific form or format. We are willing to assist the claimant in assembling the necessary information in order to adjudicate claims. The information requirements and the rationale for the requested information is provided below:

(1) *FISHING LICENSE*: Establishes a claimant's eligibility and fishing area during the period of loss.

(2) *VESSEL DOCUMENTATION & CREW INFORMATION*: For 1996 establishes where the vessel can legally fish and how crewmembers are compensated.

(3) *FEDERAL INCOME TAX RETURNS*: For 1993, 1994, 1995, 1996. Establishes non-continuing expenses (bait, fuel, etc.), and confirms that fishing income reported on the returns corresponds with settlement sheets or receipts.

(4) *DOCUMENTATION ON NUMBER OF TRAPS, TRAPS HAULED PER TRIP AND POUNDS CAUGHT MONTHLY FOR 1994, 1995 & 1996*: Shows where claimant's traps were located during the course of the year, and whether fishing losses resulted from the oil spill. This information is used to project the amount of lost income due to the spill, and to account for increased effort, seasonality and new equipment, etc.

(5) *DOCUMENTATION FOR NEW TRAPS FOR 1996*: Demonstrate claimant's intent to expand his business prior to the oil spill.

(6) *A MEETING WITH THE CLAIMANT*: Once we and our contractor have the above information and have had an opportunity to review it, our contractor will meet or perform a telephone interview, if necessary, with the claimant to resolve any questions regarding the information provided.

NATIONAL POLLUTION FUNDS CENTER

EXAMPLE 1996 LOBSTER LOST PROFITS CALCULATION
DECEMBER 8, 1998

SAMPLE CALCULATION OF LOST LOBSTER 1996 INCOME

Description	January	February	March	April	May	June	July	August	September	October	November	December	Total
(1) 1996 Seasonally Adjusted Average Catch (In Pounds) Per Trap-Haul	0.262	0.262	0.262	0.877	0.877	0.877	3.364	3.364	3.364	1.461	1.461	1.461	
(2) Multiplied by: The Number Trap-Hauls	300	300	300	300	300	300	300	300	300	300	300	300	
1996 Expected Catch Per Trip	78.72	78.72	78.72	263.01	263.01	263.01	1,009.11	1,009.11	1,009.11	438.35	438.35	438.35	
(3) Multiplied by: Number of Trips	4	4	4	6	6	6	12	12	12	8	8	8	
1996 Total Expected Catch	314.90	314.90	314.90	1,578.07	1,578.07	1,578.07	12,109.31	12,109.31	12,109.31	3,506.83	3,506.83	3,506.83	
(4) Multiplied by: 1995 Quarterly Catch Variance Percentage	104.00%	104.00%	104.00%	95.00%	95.00%	95.00%	120.00%	120.00%	120.00%	75.00%	75.00%	75.00%	
1996 Projected Catch	327.50	327.50	327.50	1,499.17	1,499.17	1,499.17	14,531.17	14,531.17	14,531.17	2,630.12	2,630.12	2,630.12	
(5) Multiplied by: 1995 Quarterly Average Price Per Pound	$4.02	$4.02	$4.02	$4.02	$4.02	$4.02	$3.01	$3.01	$3.01	$3.16	$3.16	$3.16	
1996 Projected Sales	$1,317	$1,317	$1,317	$6,027	$6,027	$6,027	$43,739	$43,739	$43,739	$8,311	$8,311	$8,311	$178,180
(6) Less: 1996 Actual Sales	$0	$0	$0	$0	$1,000	$2,400	$25,000	$44,500	$44,500	$8,500	$8,500	$8,500	$142,900
(7) ***TOTAL LOST SALES***	$1,317	$1,317	$1,317	$6,027	$5,027	$3,627	$18,739	NO LOSS	NO LOSS	NO LOSS	NO LOSS	NO LOSS	$37,368

(8) ***LESS SAVED EXPENSES***

Less Saved Expenses:		
Fuel	5.00%	$499
Bait	8.00%	$798
Total Saved Expenses:		$1,297

(9) ***TOTAL LOST PROFITS***	**$36,071**

EXAMPLE ONLY